

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff

vs

CRIMINAL 05-0047CCC

1) **JOSE R. LUGO-GUERRERO**
2) OSCAR SOSA-DELGADO
3) ALEXANDER GUZMAN-DEL-VALLE

Defendants

O R D E R

Before the Court is the Sentencing Memorandum and Objection to PSR filed by defendant José Lugo Guerrero on August 30, 2006 (**docket entry 131**), where he objects to the application of a two-level upward adjustment under U.S.S.G. §3C1.2. The U.S. Probation Officer based the adjustment on the erratic driving of the getaway car where defendant was a passenger, as described by a government witness, which he concluded created a substantial risk of death or serious bodily injury to others. Defendant contends that while his two co-defendants were also in the getaway car, their plea agreements with the government did not include the adjustment, and that their Pre-Sentence Reports did, the Court sustained their objections to it and did not apply the same.

In declining to apply this adjustment to co-defendant Oscar Sosa-Delgado, we noted that he was not the driver of the getaway car and that there was no evidence before us showing that he had instigated, commanded, procured, or induced the reckless driving. See docket entry 74. In refusing to utilize it against co-defendant Alexander Guzmán-Del Valle, we observed that while he was the driver of the car, the government had failed to submit evidence in support of the adjustment, did not oppose the objection to it, and had in fact failed to apply it in the Plea Agreement it negotiated with defendant. See docket entry 80.

In this instance, although the government has not opposed the objection we have the benefit of the trial testimonies, which we have reviewed. Having done so, we have failed to find any evidence that would serve to establish that defendant Lugo-Guerrero, while not the driver

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of the getaway car, did counsel, instigate, command, procure, induce or cause the reckless driving of co-defendant Guzmán-Del Valle. Thus, we will not apply the adjustment under §3C1.2 to defendant Lugo Guerrero either. Accordingly, the Objection to PSR filed by defendant José Lugo Guerrero (**docket entry 131**) is SUSTAINED.

SO ORDERED.

At San Juan, Puerto Rico, on November 6, 2006.

S/CARMEN CONSUELO CEREZO
United States District Judge